

REMARKS

Summary of Office Action

As an initial matter, Applicants note with appreciation that the rejections and objections set forth in the previous Office Action have been withdrawn.

Claims 12-31, i.e., all claims of record, are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yashuda et al., JP 7-330560 (hereafter “YASHUDA”) and Albacarys et al., U.S. Patent No. 6,338,855 (hereafter “ALBACARYS”), in view of Golz-Berner, U.S. Patent No. 6,989,150 (hereafter “GOLZ”).

Response to Office Action

Reconsideration and withdrawal of the rejection of claims 12-31 under 35 U.S.C. § 103(a) of record are respectfully requested, in view of the following remarks.

Present independent claim 12, for example, is drawn to a cosmetic preparation which comprises

- (a) a protein hydrolyzate from at least one of silk, pashmina, cashmere wool, merino wool and mohair,
- (b) an extract from mussel threads of mussels,
- (c) at least one of sericin and a hydrolyzate of sericin, and optionally,
- (d) one or more amino acids which are biogenic and/or functional.

The rejection essentially asserts that it would allegedly have been obvious to one of ordinary skill in the art to add to the hair dye compositions of YASHUDA (which comprise a protein hydrolyzate which may, *inter alia*, be a silk protein hydrolyzate, and amino acids such as glycine, (phenyl)alanine, valine, leucine, serine, threonine, tyrosine, asparagine, aspartic acid, cysteine, histidine, arginine, glutamine, and pyrrolidonecarboxylic acid, both sericin (in view of the disclosure of ALBACARYS which mentions, *inter alia*, amino acids, hydrolyzed silk and sericin as possible components of skin or hair cleansing compositions) and an extract from mussel threads (in view of the disclosure of GOLZ which allegedly teaches “the use of byssus (mussel silk) in a cosmetic preparation”).

Applicants respectfully traverse this rejection. Regarding ALBACARYS it is noted that this document is directed to a substantially dry, disposable, personal cleansing article which is useful for both cleansing the skin or hair and delivering skin care actives onto the skin or hair. The article comprises a water insoluble substrate, a lathering surfactant, and a skin care active component and preferably further comprises a deposition aid and/or a conditioning component (see, e.g., abstract of ALBACARYS).

ALBACARYS discloses hundreds, if not thousands, of skin care active components, depositions aids and conditioning components which may be present in the article disclosed therein. In fact, it would be difficult to name a component which has in the past been described as a possible component of a skin or hair care or cleansing composition and is not mentioned in ALBACARYS.

For example, the laundry list of specific examples of most diverse skin care active components (e.g., anti-acne actives, anti-wrinkle and anti-skin atrophy actives, skin barrier repair aids, cosmetic soothing aids, topical anesthetics, artificial tanning agents and accelerators, skin

lightening actives, antimicrobial and antifungal actives, sunscreen actives, sebum stimulators, sebum inhibitors, etc.) which may be present in the article of ALBACARYS spans about 10 columns, extending from col. 17, line 22 to col. 26, line 18. In view thereof it is not particularly surprising that this list of hundreds, if not thousands, of exemplary skin care active components also includes amino acids (i.e., (sulfur-containing) amino acids and derivatives and salts thereof as examples of anti-acne agents in col. 17, lines 27-29 and as examples of anti-wrinkle, anti-skin atrophy and skin repair actives in col. 19, lines 37-40).

Further, the laundry list of specific examples of most diverse deposition aids which may optionally be present in the article of ALBACARYS spans more than 8 columns, extending from col. 29, line 6 to col. 37, line 62, and includes hydrolyzed silk as one of the many examples from the class of protein derived polymers which may be used as deposition aids and are listed in col. 32, lines 40-50. In this regard, it further is noted that the list of preferred nonionic deposition aids in col. 37, lines 58-62 does not include hydrolyzed silk.

Even further, the laundry list of specific examples of conditioning agents which may optionally be present in the article of ALBACARYS extends from col. 38, line 60 to col. 42, line 52 and includes sericin as one of the many (more than hundred) examples from the class of water-soluble conditioning agents which may be employed.

It also is pointed out that none of the many compositions which are exemplified in ALBACARYS (see columns 52-56) appears to contain any amino acid or any protein derived polymer, let alone contains sericin.

In view of the foregoing facts it is evident that merely because ALBACARYS mentions amino acids, hydrolyzed silk and sericin among the hundreds, if not thousands, of specific examples

of (optional) components which may be present in the personal cleansing article disclosed therein, there is no apparent reason for one of ordinary skill in the art to add sericin to a hair dye composition according to YASHUDA, i.e., a composition which contains certain amino acids and may also contain silk protein hydrolyzate as protein hydrolyzate and has nothing to do with a cleansing composition.

Turning to GOLZ, this document is directed to a cosmetic preparation of active substances which protects the skin against free radical aggression in a particularly effective manner and consists of (i) a bark extract of quebracho blanco which contains at least 90 wt. % of proanthocyanidine oligomers, (ii) a silkworm extract which contains the peptide cecropine, (iii) amino acids and a vitamin mixture, (iv) a non-ionic, cationic or anionic hydrogel, (v) phospholipids, (vi) a yeast disintegration product and (vii) cyclodextrins. The preparation can contain additional active substances such as plant extracts of acerola, sea weed, citrus, bitter orange, cherry, papaya, tea, coffee beans, skin tree and angelica. See, e.g., abstract of GOLZ.

Further, according to col. 5, lines 9-29 of GOLZ the preparation may further contain one or several of the following components:

- (1) extracts or treated extracts of plants binding free radicals or moisture, selected among acerola fruits (*Malpighia punidifolia*), *Camellia oleifera*, *Colunsonia canadensis* and *Hibiscus sabdariffa*;
- (2) extracts or treated extracts of algae binding free radicals or moisture, selected among omega plankton with a high content of cerebrosid stimulants, micro algae of the chlorella species and macro algae of the ulva species associated with byssus (mussel silk) as biotechnological protein fraction and subsequently associated with dextrin, wherein the product appears in the mixture with

peptide derivates derived from α -MSH and associated with xanthin;

(3) natural and synthetic polymers selected among chitosanglycolate, condensed products of desiccated milk, and activated fatty acids,

(4) magnetically hard single crystals of bariumhexaferrite having a coercitive field strength of 3000 5000 Oe and a grain size of 50 1200 nm intercalated in or mixed with asymmetric lamellar aggregates for phospholipids and fluorocarbons as well as

(5) other active substances and carriers selected among hyaluronic acid, omega CH activator, behentrimonium chloride, passion flower oil as well as modified kaolin.

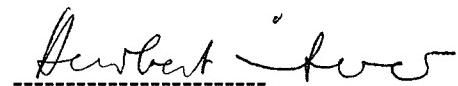
Apart from the fact that the above passage (and the corresponding passage of claim 8 of GOLZ specifically relied on by the Examiner) does not mention any extract from threads of mussels but merely mentions extracts or treated extracts of certain kinds of algae which are associated with byssus (mussel silk) as biotechnological protein fraction and subsequently associated with dextrin, wherein the product appears in the mixture with peptide derivates derived from α -MSH and associated with xanthin, it is not seen what would have provided an apparent reason for one of ordinary skill in the art to add any of the many examples of optional components of the cosmetic preparation of GOLZ, i.e., a preparation which protects the skin against free radical aggression and consists of a bark extract of quebracho blanco which contains at least 90 wt. % of proanthocyanidine oligomers, a silkworm extract which contains the peptide cecropine, amino acids and a vitamin mixture, a hydrogel, phospholipids, a yeast disintegration product and cyclodextrines as critical components, to a hair dye composition according to YASHUDA, i.e., a composition which (merely) contains certain amino acids and a protein hydrolyzate as essential components. The present Office Action does not provide any explanation in this regard, either.

Applicants submit that for at least all of the foregoing reasons, YASHUDA in view of ALBACARYS and GOLZ clearly is unable to render obvious the subject matter of any of the claims submitted herewith. Accordingly, the rejection of claims 12-31 under 35 U.S.C. § 103(a) is without merit, wherefore withdrawal thereof is warranted and respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
Roger PICANO et al.



Neil F. Greenblum
Reg. No. 28,394

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GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

Heribert F. Muensterer
Reg. No. 50,417